Supreme Court, U.S.
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No. _____

In the Supreme Court of the United States

JEFFREY C. PHELPS,

Petitioner,

v.

COMMONWEALTH OF KENTUCKY,

Respondent.

On Petition for a Writ of Certiorari to the Kentucky Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the standards set forth by the American Bar Association (ABA) and the National Legal Aid and Defender Association for criminal defense (NLADA), that are applicable to review of matters involving ineffective assistance of counsel are merely "***salutary***" or are to be given substantial weight when conducting review of allegations of ineffective assistance of counsel in criminal matters.

RULE 14.1(b)STATEMENT

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner: Jeffrey C. Phelps

Respondents: Commonwealth of Kentucky

RULE 29.6 STATEMENT

Petitioner has no parent corporation, and no publicly held company owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Jeffrey C. Phelps (hereinafter "Phelps"), respectfully petitions this Court for a writ of certiorari to review an order of the Supreme Court of Kentucky, which denied Phelps's motion for discretionary review of the opinion of the Kentucky Court of Appeals, Case No. 2004-CA-000710-MR, rendered on July 15, 2005 The Kentucky Court of Appeals' opinion affirmed Ohio Circuit Court's order which had denied a motion to for Relief from Final Judgment and to Vacate or Set Aside Sentence. The opinion of the Court of Appeals differs from opinions of this Court.

OPINIONS BELOW

An unreported order of Ohio Circuit Court, entered on March 27, 2004 [Pet. App. at 7a], denied a motion to for Relief from Final Judgment and to Vacate or Set Aside Sentence. That order was appealed to the Kentucky Court of Appeals, and on July 15, 2005, the Kentucky Court of Appeals rendered its opinion [Pet. App. at 2a], affirming the circuit court's order. [Pet. App. at 7a]. That Kentucky Court of Appeals' opinion has not been officially reported. A motion for discretionary review was timely filed with the Supreme Court of Kentucky. The Supreme Court of Kentucky denied petitioner's motion for discretionary review in an unreported order dated December 14, 2005. [Pet. App. at 1a].

JURISDICTION

The certiorari jurisdiction of this Court is invoked in conformity with 28 U.S.C. 1254(1). The Kentucky Court of Appeals rendered its opinion on July 15, 2005. Petitioner

timely filed a Motion for Discretionary Review with the Supreme Court of Kentucky and it denied that motion on December 14, 2005. This Petition was then timely filed.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This matter involves interpretation of the standards set forth by the American Bar Association (ABA) and the National Legal Aid and Defender Association for criminal defense (NLADA), as these are to be applied to the guarantees provided by the Sixth Amendment of the United States Constitution.

STATEMENT

Respondent, Commonwealth of Kentucky, prosecuted an indictment against the Petitioner for the offense of Rape in the First Degree, which had been handed up by the Ohio County Grand Jury against Petitioner, Phelps.

This is a case that presents a question involving important constitutional rights. This case strikes at the very heart of the guarantees provided in our system of government to those individuals who are accused of criminal misconduct. Specifically, this case concerns whether the Petitioner, Jeffrey C. Phelps, was provided with effective assistance of counsel at each stage of the trial process that resulted in his rape conviction and subsequent sentencing (to thirteen years in prison). Of particular concern is the weight and deference to be given to the standards set forth by the American Bar Association (ABA) and the National Legal Aid and Defender Association for criminal defense (NLADA), that are applicable to review of matters involving ineffective assistance of counsel. Petitioner did identify certain

undisputed facts showing that his trial counsel's conduct fell far below, or directly violated, these standards. However, the Kentucky Court -Court of appeals concluded that these guidelines were merely "***salutary***" and that the trial counsel provided Petitioner at least adequately effective assistance. (Kentucky Court of Appeals Opinion Affirming, rendered July 15, 2004, at pp. 4, 6).

Here is a summary of what occurred below:

Leigh A. Jackson (hereinafter referred to as "Jackson"), trial counsel for Jeffrey Phelps, did nothing or very little to investigate this matter before this case went to trial. Jackson interviewed Jeffrey Phelps about this matter only one time - and that was immediately prior to trial, in a room near the courtroom, when Jackson and Jeffrey Phelps spoke for about thirty minutes. T.R. at 95.

Jackson made one (unproductive) attempt to talk to the alleged victim in this case; however, she did not speak to or interview any of the other witnesses for the Commonwealth prior to trial. Id. In fact, Jackson did not tell Jeffrey Phelps that she would be interviewing any witnesses on his behalf prior to trial. Id.

Jackson did not ever consider hiring an expert witness to testify on behalf of Jeffrey Phelps, and Jackson did not tell Jeffrey Phelps that she ever planned to do that. Id.

During the trial, there was evidence submitted concerning an alleged "EPO" [Emergency Protective Order] that may have been taken out by the alleged victim against Jeffrey Phelps; however, Jackson never attempted to get any information about, or a copy of, the alleged "EPO" that was testified about during the trial. Id.

Before the trial began Jackson never reviewed with Jeffrey Phelps the evidence that the Commonwealth was going to present at trial. Id. Jeffrey Phelps was not shown any exhibits, statements made by any witnesses before trial, or any other evidence (including, but not limited to, any physical evidence examination reports). Id.

The only time that Jackson ever discussed with Jeffrey Phelps the decision of whether to have him testify at trial was during the one interview that occurred on the day of the trial. Id. Jackson did not discuss with Jeffrey Phelps the risks or benefits of that decision. Id.

The only testimony preparation that was provided to Jeffrey Phelps by Jackson was the admonition that he should keep his answers to 'yes' or 'no' or short answers. Id.

Jackson did not ever suggest to Jeffrey Phelps that he should use character witnesses and Jackson did not ask Jeffrey Phelps who to recommend as character witnesses. T.R. at 96; see also Affidavits of both of the natural parents of Jeffrey Phelps, each proving that there was no contact with them initiated by Jackson prior to trial or sentencing, T.R. at 102-105.)

Jackson never discussed the details of Jeffrey Phelps pre-sentence investigation (PSI) report with him. T.R. at 96. In fact, the only thing that Jackson asked Jeffrey Phelps was whether he had looked over it. Id.

Jackson did not discuss the sentencing options that were available to Jeffrey Phelps after the jury had made its finding of guilt. Id. Jackson told Jeffrey Phelps that a thirteen-year sentence would be better than the jury's likely recommendation. Id.

Jackson did not review the pre-sentence investigation (PSI) report before Jeffrey Phelps' sentence was imposed. Id. Jackson did not prepare Jeffrey Phelps in any way before preparing his portion of the pre-sentence investigation (PSI) report. Id.

Jackson did not, after the jury made its finding, explain to Jeffrey Phelps the meaning and/or consequences of that finding of guilt. Further, after the jury had made its finding of guilt, Jackson did not tell Jeffrey Phelps about his chances of success if his case was appealed. Id. The only thing that Jackson told Jeffrey Phelps about that was that it was her word (Zara Phelps, the alleged victim) against mine (Jeffrey Phelps). Id.

In addition, after the jury had made its finding of guilt, Jeffrey Phelps asked Jackson what she might argue if this case had been appealed and Jackson told Jeffrey Phelps that she did not know. Id.

Jackson did not tell Jeffrey Phelps any of the advantages and/or disadvantages of an appeal, and she did not tell him that the decision of whether to appeal was his choice, not hers. Id. Further, Jackson did not tell Jeffrey Phelps that he could try to negotiate a conditional sentencing plea to reserve his right to appeal. Id.

These facts were presented to the trial court and the Commonwealth in writing, and at a hearing held on the motions to set aside the conviction and sentence. T.R. at 83-97; and videotape of hearing on motion held on February 26, 2004. None of these facts were rebutted by the Commonwealth - no responsive briefs were filed and no cross-examination was conducted, nor was evidence introduced by the Commonwealth, at the hearing on the